Paper No. 23
ejs

THIS DISPOSITION IS NOT CITABLE AS PRECEDENT OF THE TTAB
JULY 15, 99

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Dexter S. King,
as agent for
the heirs of
Dr. Martin Luther King, Jr.

v.

Trace Publishing Co.

Opposition No. 96,881
to application Serial No. 74/475,017
filed on December 29, 1993

Miles J. Alexander of Kilpatrick Stockton LLP for Dexter S. King, as agent for the heirs of Dr. Martin Luther King, Jr.

C. Emmett Pugh of Pugh/Associates for Trace Publishing Co.

Before Seeherman, Quinn and Hohein, Administrative Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

Dexter S. King, as agent for the heirs of Dr. Martin Luther King, Jr., has filed an opposition to the registration of the mark WE HAVE A DREAM for "promoting sports competitions and/or events of others." This application was filed by Trace Publishing Company on

December 29, 1993, claiming a bona fide intention to use the mark in commerce.[1]

The opposition has been brought on the grounds that applicant's use of the mark falsely suggests a connection with Dr. Martin Luther King, Jr. (Section 2(a) of the Trademark Act) and that it is likely to cause confusion (Section 2(d) of the Trademark Act). Specifically, opposer has alleged that since as early as August 28, 1963, when Dr. Martin Luther King, Jr. delivered his "I Have A Dream" speech at the Lincoln Memorial, the phrase and mark I HAVE A DREAM have been unmistakably associated with and used to identify Dr. King and goods and services sponsored or approved by or affiliated with, Dr. King; that the mark was used continuously by Dr. King and subsequently by the heirs of Dr. King (hereafter the King Estate); that Dr. King and/or the King Estate have used and continue to use the mark for, inter alia, t-shirts, posters, pens, key chains, letter openers, books and other printed materials, statuettes, and educational services and charitable fund raising; that the mark I HAVE A DREAM uniquely identifies Dr. King and goods and services sponsored or approved by, or affiliated with, Dr. King and the King Estate; that the mark I HAVE A DREAM is unmistakably associated with and identified with Dr. King, and points uniquely to him; that

[1] Application Serial No. 74/475,017.

applicant's mark falsely suggests a connection with or sponsorship by Dr. King; that the rights of the King Estate were confirmed in a Georgia Supreme Court case which held that Dr. King's family and estate maintain the right to control, preserve and extend his status and memory and to prevent unauthorized exploitation thereof by others; that Dr. King and the King Estate used the mark I HAVE A DREAM since prior to the filing date of applicant's application; that applicant's mark is substantially identical to the King Estate's mark; that the parties' goods and services are closely related; and that applicant's use and registration of WE HAVE A DREAM is likely to cause confusion, mistake and deception.

In its answer to the notice of opposition, applicant acknowledged that Dr. King gave a speech using the phrase "I have a dream," but that this reference was not to any sports competition but rather was within the context of a political, civil rights speech about what he foresaw in the political and social future for others. Applicant also acknowledged that this political speech occurred before applicant began using the mark WE HAVE A DREAM for promoting sports competition and/or events of others.[2] Applicant

[2] We note that applicant's application was based on an asserted intention to use the mark and that, although applicant asserted in its answer that the mark is in use, there is nothing in the record to support this statement.

otherwise denied the salient allegations of the notice of opposition.

Only opposer filed a brief; an oral hearing was not requested.

The record includes the pleadings and the file of the opposed application. Opposer submitted, under notices of reliance, various articles, taken from a computer data base, which were published in periodical publications; portions of a trademark application, Serial No. 75/019,950, filed by the Estate of Martin Luther King, Jr., Inc.; and the complaints and consent judgments from three civil actions in the U.S. District Court for the Northern District of Georgia, one brought by Dexter King, Coretta Scott King, Yolanda King, Bernice King, and Martin Luther King, III, another brought by the Estate of Martin Luther King, Jr., Inc., and a third brought by The Martin Luther King, Jr. Center for Social Change, Inc. and Mrs. Coretta Scott King, Administratrix of the Estate of Dr. Martin Luther King, Jr., deceased, and Motown Record Corporation. Applicant did not submit any evidence.

As noted, the only evidence which has been submitted has been in the form of articles and documents from official records. The printed publications are probative only for what they show on their face; they are not proof of the statements made in the articles, since that would be

hearsay. See **Logicon, Inc. v. Logisticon, Inc.**, 205 USPQ 767 (TTAB 1980). Similarly, the official records are not probative of the statements made in the records. See **Jetzon Tire & Rubber Corporation v. General Motors Corporation**, 177 USPQ 467 (TTAB 1973). Thus, for example, the declarations which are exhibits to the request for reconsideration in Serial No. 75/019,950 cannot be considered in the manner of testimony, i.e., that the statements contained in the declaration evidence the facts asserted. To do otherwise would conflict with the Trademark Rules of Practice regarding the submission of evidence, which provide the manner in which the testimony of witnesses may be taken. See, for example, Trademark Rules 2.123 and 2.124. In particular, to allow the declarations to substitute for the testimony of the declarants as witnesses in this proceeding would deprive applicant of the ability to cross-examine those witnesses.

Turning first to the question of standing, we must confess that we are surprised that opposer did not submit any testimony to prove standing. Nevertheless, the record shows that the estate filed an application to register I HAVE A DREAM, and also brought various civil proceedings. Further, because one of the grounds for opposition is a false suggestion of a connection with Dr. King, the heirs of Dr. King, by virtue of their status as heirs, have a

demonstrable interest in this proceeding. Specifically, the statutory ground of "false suggestion of a connection" is akin, in part, to the right of publicity, which is an inheritable right. See **University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co., Inc**., 213 USPQ 594 (TTAB 1982), aff'd, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983). Moreover, we are mindful of the Court's caution in **West Florida Seafood Inc. v. Jet Restaurants Inc.**, 31 F.3d 1122, 31 USPQ2d 1660 (Fed Cir. 1994), that individual pieces of evidence must be taken together, so that the body of evidence is viewed as a whole.

With respect to the ground of likelihood of confusion, opposer has submitted no probative evidence of any use of the mark I HAVE A DREAM. As we have previously stated, the declarations in the application filed by the Estate of Martin Luther King, Jr., Inc. are evidence only of the fact that the materials were filed, but are incompetent as proof of the statements made in the declarations. Accordingly, opposer has not demonstrated priority of use, let alone use on any goods or services which would form a basis for a finding of likelihood of confusion.

This brings us to the ground of a false suggestion of a connection under Section 2(a) of the Act. In order to prevail on this ground, an opposer must demonstrate:

> (1) that the applicant's mark is the same or a close approximation of opposer's previously used name or identity;
>
> (2) that the mark would be recognized as such;
>
> (3) that the opposer is not connected with the activities performed by the applicant under the mark; and
>
> (4) that the opposer's name or identity is of sufficient fame or reputation that when the applicant's mark is used on its goods or services, a connection with the opposer would be presumed.

Buffett v. Chi-Chi's, Inc., 226 USPQ 428 (TTAB 1985).

With respect to the first point, WE HAVE A DREAM is clearly a close approximation of I HAVE A DREAM, which is alleged by opposer to be the identity of Dr. Martin Luther King, Jr.

The second point is whether applicant's mark would be recognized as Dr. King's identity, that is, does the mark point uniquely and unmistakably to Dr. King. See, **In re Sloppy Joe's International Inc.**, 43 USPQ2d 1350 (TTAB 1997). We note that applicant itself has acknowledged that Dr. King was a "great political, civil rights leader," answer, ¶ 10, and that he gave a speech using the phrase "I have a dream." answer, ¶ 7. Moreover, we think it appropriate to take judicial notice of the historical fact of his speech, and of

The New Encyclopaedia Britannica entry[3] on Martin Luther King, Jr., which refers to the speech as "famous":

> On Aug. 28, 1963, an interracial assembly of more than 200,000 gathered peaceably in the shadow of the Lincoln Memorial to demand equal justice for all citizens under the law. Here the crowds were uplifted by the emotional strength and prophetic quality of King's famous "I have a dream" speech, based on biblical phraseology.

The fame of I HAVE A DREAM, and its association with Dr. King, is reflected in the various articles made of record by opposer. Although the articles are not proof of the truth of the statements made therein, they are competent to show how the authors perceive the connection between Dr. King and I HAVE A DREAM, and how the authors believe the public will perceive it.

The articles frequently make reference to Dr. King and the phrase "I Have a Dream" or "We Have a Dream" in such a manner that the authors clearly assume the connection is obvious, and that the phrase and the person are inextricably linked. Many of the articles reveal the authors' belief that no explanation that Dr. King gave the "I Have a Dream" speech is necessary. See, for example, the following:

> Honey Creek Elementary School pupils are writing ideas to make the Rev. Martin Luther King Jr.'s dream a reality. Their completed works will be displayed beneath a big "We Have A Dream" banner.

[3] 15th ed., © 1988.

"Atlanta Journal and Constitution," Feb. 15, 1996

More than a dozen youths followed in the footsteps of civil rights leader Martin Luther King Jr. yesterday, by holding a peaceful protest at the town park on Main Street.

And though their mission was not nearly as monumental as King's they looked to him for inspiration. As they celebrated his birthday with a day off from school, the students carried picket signs asserting the right to have fun in the snow.

"We have a dream also: to play in the park without being harassed," one sign announced, borrowing a phrase from King's famous 1963 speech in Washington. "Telegram & Gazette," (Worcester, MA), Jan. 16, 1996

Few people will ever forget the hot August day in 1963 when civil-rights leader the Rev. Dr. Martin Luther King Jr. stood on the steps of the Lincoln Memorial in Washington, D.C., and delivered his trademark speech, "I Have a Dream." "The Harrisburg Patriot," Jan. 14, 1995

Multicultural events will be featured during the week surrounding Martin Luther King Jr. Day in Vancouver.

Clark County's multicultural community is sponsoring "We Have a Dream: A Celebration of Harmony and Diversity" Jan. 15-22…. "Portland Oregonian," Jan. 6, 1993

King's Dream Still Lives in Marchers' Hearts, Lives (Headline)

> "We have not forgotten him. We have a dream, too--we want drug-free kids in Eustis and everywhere else."
>
> ***
>
> A group of teens performed a walking street dance. Marchers occasionally held up an arm, fist clenched, and yelled, "Martin Luther King--Keep the dream alive.!" "Orlando Sentinel," Jan. 19, 1992
>
> A painting titled "We Have a Dream Martin and I," inspired by Dr. Martin Luther King Jr. and created by Michelle Poole, will be on exhibit today through Feb. 28 …. "The Arkansas Gazette," Feb. 1, 1991
>
> _____
>
> "We have a dream too," Jean Forbath, executive director of SOS, told the crowd, in reference to the Monday holiday marking the birthday of slain civil rights leader Dr. Martin Luther King Jr. "Los Angeles Times," Jan. 14, 1990

In view of the foregoing, we find that applicant's mark WE HAVE A DREAM points uniquely and unmistakably to the identity or persona of Dr. Martin Luther King, Jr.

As for the third part of the test, opposer has pointed out that the very fact that it has brought this proceeding shows that opposer is not connected with the activities proposed to be performed by applicant under the mark. Nor is there any evidence in the record of an affiliation with or sponsorship of applicant's proposed activities by Dr. King or his heirs or assigns.

Finally, Dr. King's identity I HAVE A DREAM is clearly of sufficient fame or reputation that, if applicant's mark

were used on its identified services, a connection with Dr. King would be presumed. As indicated above, an encyclopedia has characterized Dr. King's "I have a dream" speech as famous. The newspaper articles which opposer has made of record show not only a connection between I HAVE A DREAM and Dr. King, but discuss how Dr. King's heirs are approving the licensing of merchandise bearing Dr. King's image and words. See, for example:

> If that is the way we live now, who will condemn the King estate for licensing King-themed statuettes and checkbooks, or for suing CBS News and USA Today for using the "I Have a Dream" speech without paying fees?" "The New Orleans Times-Picayune," Sept. 2, 1997
>
> ———————
>
> A nagging controversy over how Martin Luther King Jr.'s family profits from his legacy threatened to overshadow the hometown events that mark the observance of the national holiday that honors him today.
>
> Less than two weeks ago the King estate signed a publishing deal for the slain civil rights leader's writings and speeches that may earn the family $50 million during the next five years.
>
> ***
>
> "Intellectual property is what my father created," Dexter King said. "Because my father owned no real property, his intellectual property is especially important as an asset." "Pittsburgh Post-Gazette," Jan. 20, 1997
>
> ———————
>
> The disagreement has toppled a sacred cow that prevented the King family from being publicly criticized. Now they also are being attacked for how they

> have profited from their exclusive rights to King’s name and likeness. That includes licensing fees, the selling of the "I Have a Dream" speech and price tags for family interviews. "Austin American-Statesman," Jan. 16, 1995

While, again, the articles are not proof of the truth of the statements made in them, they do show that the public has been exposed to the statements. See **Kabushiki Kaisha Hattori Seiko v. Satellite International Ltd.**, 29 USPQ2d 1317 (TTAB 1991); **American Paging Inc. v. American Mobilphone Inc.**, 13 USPQ2d 2036 (TTAB 1989), aff’d unpub. opin., 17 USPQ2d 1726 (Fed. Cir. 1990). In addition, it is common knowledge that in the United States today licensing is widespread and the names and likenesses of celebrities, both living and dead, are frequently used in connection with the advertising and sale of goods and services. See, e.g., **In re Phillips-Van Heuson Corp.**, 228 USPQ 949 (TTAB 1986). As a result of the public’s exposure to the newspaper references to Dr. King’s heirs’ licensing activities, combined with the general merchandising climate, consumers are likely to presume a connection between applicant’s use of WE HAVE A DREAM for promoting sports competitions and/or events of others, and I HAVE A DREAM, the identity of Dr. Martin Luther King, Jr.

Accordingly, we find that opposer has established that applicant's mark consists of matter which may falsely suggest a connection with Dr. Martin Luther King, Jr.

Decision: The opposition is sustained on the ground of false suggestion of a connection and dismissed on the ground of likelihood of confusion.

E. J. Seeherman

T. J. Quinn

G. D. Hohein
Administrative Trademark Judges
Trademark Trial and Appeal Board